

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

JOSEPH NOTO, GARDEN STATE
TIRE CORP., and STEPHENS
JOHNSON, Individually and on behalf
of all others similarly situated,

Plaintiff,

v.

22ND CENTURY GROUP, INC., HENRY
SICIGNANO, III AND JOHN T.
BRODFUEHRER,

Defendants.

Civil Action No. 19-cv-01285-JLS

**NOTICE OF LEAD PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

PLEASE TAKE NOTICE that Lead Plaintiffs Joseph Noto, Garden State Tire Corp., and Stephens Johnson (“Lead Plaintiffs”), through Lead Plaintiffs’ Counsel, on behalf of themselves and the Settlement Class (as defined below), hereby move this Court under Federal Rule of Civil Procedure 23 for the entry of an order (the “Proposed Order”), substantially in the form attached as Exhibit A to the Stipulation of Settlement dated April 25, 2023 (the “Settlement Stipulation”):

- (1) preliminarily approving the proposed settlement as set forth in the Settlement Stipulation, attached as Exhibit 1 to the Declaration of Brian Calandra in support of this Motion (“Calandra Declaration”), resolving this Action against all Defendants in exchange for the payment of \$3.0 million for the benefit of the Settlement Class;
- (2) preliminarily certifying a class (the “Settlement Class”), for settlement purposes only, of all persons or entities who purchased or otherwise acquired 22nd Century

common stock between February 18, 2016 and July 31, 2019, both dates inclusive, and were allegedly damaged thereby;

- (3) appointing Epiq Class Action & Claims Solutions, Inc., as Claims Administrator;
- (4) approving the form and manner of disseminating notice to the Settlement Class;
- (5) scheduling a hearing to consider final approval of the Settlement and an award of attorneys' fees and expenses and a compensatory award to Lead Plaintiffs; and
- (6) setting deadlines for the dissemination of notice, the submission of proofs of claim and requests for exclusion, the filing of objections, and the filing of Lead Plaintiffs' and Lead Counsel's motion for final approval of the Settlement and applications for attorneys' fees and expenses and a compensatory award to Lead Plaintiffs.

Lead Plaintiffs base this Unopposed Motion on this Notice of Motion, the Calandra Declaration, the Settlement Stipulation and all exhibits attached thereto, and Lead Plaintiffs' supporting Memorandum of Law, all filed contemporaneously herewith, and all pleadings, records, and papers on file herein.

The Defendants do not oppose the relief Lead Plaintiffs seek. Accordingly, Lead Plaintiffs request that the Court enter the Proposed Order.

Dated: April 25, 2023

Respectfully submitted,

POMERANTZ LLP

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Additional Counsel for Lead Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of April 2023, a true and correct copy of the foregoing was filed electronically and will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Brian Calandra
Brian Calandra